

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**PREPARED FOOD PHOTOS, INC. FKA
ADLIFE MARKETING &
COMMUNICATIONS CO., INC.,**

Plaintiff,

v.

**GRUBHUB HOLDINGS INC. and
GRUBHUB INC.,**

Defendants.

Civil Action No. 1:22-cv-3197

DEMAND FOR JURY TRIAL

**DEFENDANTS GRUBHUB HOLDINGS INC. AND GRUBHUB INC.'S
ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT**

Defendants Grubhub Holdings Inc. and Grubhub Inc. (collectively, “Grubhub”) answer Plaintiff PREPARED FOOD PHOTOS, INC. FKA ADLIFE MARKETING & COMMUNICATIONS CO., INC.’s (“Plaintiff”) Complaint for Copyright Infringement (“Complaint”) as follows:

SUMMARY OF THE ACTION

1. Plaintiff PREPARED FOOD PHOTOS, INC. FKA ADLIFE MARKETING & COMMUNICATIONS CO., INC. (“PFP”) brings this action against Defendants GRUBHUB HOLDINGS INC. and GRUBHUB INC. (collectively, “Grubhub”) for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute PFP’s original copyrighted Works of authorship.

PFP alleges that Grubhub copied PFP’s copyrighted Works from the internet in order to advertise, market and promote their business activities. Grubhub committed the violations alleged

in connection with Grubhub's business for purposes of advertising and promoting sales to the public in the course and scope of Grubhub's business.

ANSWER: Grubhub admits the Complaint purports to be an action for copyright infringement arising under the Copyright Act, 17 U.S.C. § 106. Grubhub denies the remaining allegations of paragraph 1.

2.

ANSWER: Grubhub notes that the Complaint does not include a paragraph 2.

JURISDICTION AND VENUE

3. This action arises under the Federal Copyright Act of 1976, as amended, 17 U.S.C. § 101, et seq. This Court is vested with subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1338(a) (copyright jurisdiction). This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a).

ANSWER: Grubhub admits the Complaint purports to be an action for copyright infringement arising under the Federal Copyright Act of 1976, as amended, 17 U.S.C. § 101, *et seq.* Grubhub further admits that this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

4. Grubhub is subject to personal jurisdiction in Illinois.

ANSWER: For purposes of this action, Grubhub admits that this Court has personal jurisdiction over Grubhub.

5. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because the events giving rise to the claims occurred in this district, Grubhub engaged in infringement in this district, Grubhub resides in this district, and Grubhub is subject to personal jurisdiction in this district.

ANSWER: Grubhub admits that venue is proper in this judicial district. Grubhub further admits it maintains an established place of business in the state of Illinois and this district. Grubhub denies the remaining allegations of paragraph 5.

THE PARTIES

6. PFP is a retail food advertising company servicing retailers and wholesalers throughout the United States for almost 40 years. PFP specializes in custom photography, full service design and production, web and print management, mobile technology, and proprietary digital advertising platforms.

ANSWER: Grubhub is without knowledge or information sufficient to form a belief as to the truth of the allegations about Plaintiff in paragraph 6.

7. Grubhub own and operate a leading online and mobile food-ordering and delivery marketplace with a comprehensive network of restaurant and retail partners, as well as nearly 24 million active diners. At all times relevant herein, Grubhub owned and operated the internet websites located at the URLs www.Grubhub.com and www.seamless.com (the “Websites”).

ANSWER: Grubhub admits it owns and operates the websites located at the URLs www.Grubhub.com and www.seamless.com (the “Websites”). Grubhub further admits it owns and operates an online food delivery marketplace, which through its website and application connects customers to restaurants and through third-party delivery partners facilitates food delivery orders. Grubhub also admits it has millions of active users. Grubhub denies the remaining allegations of paragraph 7.

8. Grubhub Holdings Inc. is a Delaware Corporation, with its principal place of business at 111 West Washington Street, Suite 1200, Chicago, IL 60602, and can be served by serving its Registered Agent, Illinois Corporation Service Company, 801 Adlai Stevenson Drive, Springfield, IL 62703.

ANSWER: Grubhub admits that Grubhub Holdings Inc. is a Delaware corporation with a place of business at 111 West Washington Street, Suite 1200, Chicago, IL 60602. Grubhub also admits that Grubhub Holdings Inc. can be served through its registered agent, Illinois Corporation Service Company, 801 Adlai Stevenson Drive, Springfield, IL 62703.

9. Grubhub Inc. is a Delaware Corporation, with its principal place of business at 111 West Washington Street, Suite 1200, Chicago, IL 60602, and can be served by serving its Registered Agent, Corporation Service Company, Illinois Corporation Service Company, 801 Adlai Stevenson Drive, Springfield, IL 62703.

ANSWER: Grubhub admits that Grubhub Inc. is a Delaware corporation with a place of business at 111 W Washington St, Suite 1200, Chicago, IL 60602. Grubhub also admits that Grubhub Inc. can be served through its registered agent, Illinois Corporation Service Company, 801 Adlai Stevenson Drive, Springfield, IL 62703.

THE [ALLEGEDLY] COPYRIGHTED WORKS AT ISSUE

The below table details the Copyright Titles, Registration Numbers and Registration Issue Dates of the works of intellectual property at issue in this case, one of which is shown below, and which are referred to herein as the “Works.” Copies of the Works are attached hereto as Exhibit 1. Copies of the Registration Certificates are attached hereto as Exhibit 2.

Copyright Title	Registration Number	Registration Issue Date
Bagel003	VA 2-014-708	September 23, 2016
BeefEyeRoundSteakGrI Mrk003_ADL	VA 2-025-765	January 5, 2017
BeefKabobGrI Mrk002	VA 2-012-581	August 5, 2016
BeefMeatloaf018	VA 2-012-581	August 5, 2016

BeefPrimeRibRoast012_ADL	VA 2-047-019	January 13, 2017
BuffaloWingsHR0602	VA 2-022-602	November 18, 2016
CalzoneItalianColdCut007_ADL	VA 2-047-009	March 3, 2017
ChickenFried013	VA 2-017-741	September 20, 2016
ChickenParmesan010_ADL	VA 2-046-591	January 23, 2017
ChickenParmesan020	VA 2-017-741	September 20, 2016
ChickenParmesan022_ADL	VA 2-026-514	January 11, 2017
ChickenSandwichBreast005_ADL	VA 2-046-821	January 29, 2017
ChickenSandwichBuffalo001_ADL	VA 2-046-821	January 29, 2017
ChickenTender004	VA 2-017-741	September 20, 2016
ChickenTenderBuffalo006_ADL	VA 2-046-824	January 26, 2017
ChickenThighsFSHC1212	VA 2-055-100	June 8, 2017
ChickenWingBuffalo006	VA 2-019-412	September 29, 2016
ChickenWingBuffalo027	VA 2-019-412	September 29, 2016
ChickenWingBuffalo028	VA 2-019-412	September 29, 2016
ChickenWingHot004_ADL	VA 2-046-824	January 26, 2017
ChickenWingHot007	VA 2-019-412	September 29, 2016
ChickenWrapsFSHC1406	VA 2-055-100	June 8, 2017
Chili007_ADL	VA 2-046-803	February 15, 2017

ChocolateIceCreamHR0609	VA 2-024-712	December 18, 2016
ColdCutAsst019_ADL	VA 2-046-821	January 29, 2017
HotWingsRanch001_ADL	VA 2-024-450	December 9, 2016
IceCreamWaffleCone002_ADL	VA 2-027-767	January 26, 2017
LiverwurstSandwich	VA 2-009-665	July 12, 2016
LobsterSalad001_ADL	VA 2-055-111	May 5, 2017
LobsterSalad002	VA 2-020-970	October 31, 2016
OnionRing001	VA 2-012-581	August 5, 2016
Pickle005_ADL	VA 2-046-594	February 8, 2017
PizzaCheese015_ADL	VA 2-047-009	March 3, 2017
PizzaDeluxe004_ADL	VA 2-047-009	March 3, 2017
PretzelSoft001	VA 2-014-921	August 26, 2016
SaladCaesar005_ADL	VA 2-046-822	February 8, 2017
SaladChef002	VA 2-014-921	August 26, 2016
SandwichTurkeySub001_ADL	VA 2-033-004	March 15, 2017
SubAmericanColdCut011_ADL	VA 2-027-767	January 26, 2017
SubItalianColdCut009_ADL	VA 2-046-594	February 8, 2017
SubTurkey006_ADL	VA 2-027-767	January 26, 2017
TacoSalad004_ADL	VA 2-029-324	February 3, 2017
Taquito004	VA 2-019-921	October 14, 2016
VealParmesan002_ADL	VA 2-084-082	January 28, 2017
VegetableKabob001	VA 2-019-412	September 29, 2016
WrapChickenCaesar002	VA 2-015-841	September 1, 2016
WrapChickenSalad001	VA 2-017-741	September 20, 2016
WrapTurkey004	VA 2-017-741	September 20, 2016



The Works in perspective, orientation, positioning, lighting and other details are entirely original, distinctive, and unique. As such, the Works each qualify as subject matter protectable under the Copyright Act.

ANSWER: Grubhub admits that what Plaintiff alleges to be copies of the “Works” are attached as Exhibit 1 to the Complaint and copies of what Plaintiff alleges to be the “Registration Certificates” are attached as Exhibit 2 to the Complaint. Grubhub denies the Works in perspective, orientation, positioning, lighting and other details are entirely original, distinctive, and unique and that the Works each qualify as subject matter protectable under the Copyright Act. Grubhub is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in the unnumbered paragraph. Grubhub further notes that Plaintiff’s allegations call for a legal conclusion and therefore do not require a response.

10.

ANSWER: Grubhub notes that the Complaint does not include a paragraph 10.

11.

ANSWER: Grubhub notes that the Complaint does not include a paragraph 11.

12. PFP's Works are protected by copyright but are not otherwise confidential, proprietary, or trade secrets.

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12.

13. At all relevant times PFP was the owner of the copyrighted Works at issue in this case.

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13.

[ALLEGED] INFRINGEMENT BY DEFENDANTS

14. Grubhub have never been licensed to use the Works at issue in this action for any purpose.

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14.

15. On a date after the Works at issue in this action were created, but prior to the filing of this action, Grubhub copied the Works.

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub denies the allegations of paragraph 15.

16. PFP discovered the unauthorized use of its Works on the Websites on the following dates:

Copyright Title	Infringement Discovered
Bagel003	August 13, 2021
BeefEyeRoundSteakGrlMrk003_ADL	December 10, 2021
BeefKabobGrlMrk002	August 11, 2021
BeefMeatloaf018	August 11, 2021
BeefPrimeRibRoast012_ADL	July 19, 2021
BuffaloWingsHR0602	August 12, 2019
CalzoneItalianColdCut007_ADL	July 28, 2021
ChickenFried013	August 25, 2021
ChickenParmesan010_ADL	December 20, 2021
ChickenParmesan020	August 24, 2021
ChickenParmesan022_ADL	October 4, 2021
ChickenSandwichBreast005_ADL	February 11, 2020
ChickenSandwichBuffalo001_ADL	July 16, 2020
ChickenTender004	August 23, 2021
ChickenTenderBuffalo006_ADL	September 14, 2021
ChickenThighsFSHC1212	April 16, 2021

ChickenWingBuffalo006	July 2, 2021
ChickenWingBuffalo027	July 2, 2021
ChickenWingBuffalo028	July 2, 2021
ChickenWingHot004_ADL	July 20, 2021
ChickenWingHot007	July 1, 2021
ChickenWrapsFSHC1406	September 11, 2020
Chili007_ADL	October 25, 2021
ChocolateIceCreamHR0609	October 26, 2020
ColdCutAsst019_ADL	September 15, 2021
HotWingsRanch001_ADL	November 27, 2019
IceCreamWaffleCone002_ADL	February 4, 2022
LiverwurstSandwich	June 18, 2019
LobsterSalad001_ADL	July 30, 2021
LobsterSalad002	August 5, 2021
OnionRing001	August 10, 2021
Pickle005_ADL	July 27, 2021
PizzaCheese015_ADL	February 9, 2022
PizzaDeluxe004_ADL	February 9, 2022
PretzelSoft001	August 16, 2021

SaladCaesar005_ADL	February 4, 2021
SaladChef002	February 14, 2022
SandwichTurkeySub001_ADL	November 10, 2020
SubAmericanColdCut011_ADL	July 26, 2021
SubItalianColdCut009_ADL	November 3, 2021
SubTurkey006_ADL	February 4, 2022
TacoSalad004_ADL	December 14, 2020
Taquito004	July 7, 2021
VealParmesan002_ADL	July 22, 2021
VegetableKabob001	February 28, 2022
WrapChickenCaesar002	November 19, 2021
WrapChickenSalad001	August 20, 2021
WrapTurkey004	June 20, 2019

ANSWER: Grubhub is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16.

17. Grubhub copied PFP's copyrighted Works without permission or authorization of PFP or the law.

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub denies the allegations of paragraph 17.

18. After Grubhub copied the Works, they made further copies and distributed the Works on the internet to promote the sale of goods and services as part of its online and mobile food-ordering and delivery business.

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub denies the allegations of paragraph 18.

19. Grubhub copied and distributed PFP's copyrighted Works in connection with Grubhub's business for purposes of advertising and promoting Grubhub's business, and in the course and scope of advertising and selling products and services.

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub denies the allegations of paragraph 19.

20. Grubhub committed copyright infringement of the Works when it displayed the Works on at least the URLs listed on Exhibit 3 attached hereto.

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub denies the allegations of paragraph 20.

21. PFP never gave Grubhub permission or authority to copy, distribute or display the Works at issue in this case.

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub denies the allegations of paragraph 21.

22. Grubhub copied PFP's copyrighted Works without permission or authorization of PFP or the law.

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub denies the allegations of paragraph 22.

23. PFP notified Grubhub of the allegations set forth herein on August 26, 2021 and in subsequent communications with Grubhub. To date, the parties have failed to resolve this matter.

ANSWER: Grubhub admits that Plaintiff sent Grubhub a letter on August 26, 2021. Grubhub denies that the August 26, 2021 letter included the same allegations set forth in this Complaint. Grubhub admits the parties have failed to resolve this matter.

[COUNT I]
[ALLEGED] DIRECT COPYRIGHT INFRINGEMENT
17 U.S.C. §§ 501 *et seq.*

24. PFP incorporates the allegations of paragraphs 1 through 23 of this Complaint as if fully set forth herein.

ANSWER: Grubhub incorporates by reference its responses to paragraphs 1–23 of this Answer as if fully set forth herein.

25. PFP owns valid copyrights in the Works at issue in this case.

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25.

26. PFP registered the Works at issue in this case with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26.

27. Grubhub accessed, reproduced, displayed, and distributed the Works at issue in this case and made derivatives of the Works without PFP's authorization in violation of 17 U.S.C. § 501.

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub denies the allegations in paragraph 27.

28. Grubhub performed the acts alleged in the course and scope of its business activities.

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub denies the allegations in paragraph 28.

29. By reproducing the Works on its servers, Grubhub infringed PFP's exclusive rights granted in 17 U.S.C. § 106, specifically its exclusive rights to: (1) reproduce the copyrighted works in copies; and (2) distribute copies of the copyrighted works to the public by sale or other transfer of ownership, or by rental, lease, or lending.

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub denies the allegations in paragraph 29.

30. As PFP discovered the unauthorized reproduction and distribution of the Works within three years from the date of this filing, all claims of infringement are within the three-year statute of limitations period pursuant to 17 U.S.C. § 507(b).

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30.

31. As a direct and proximate result of its wrongful conduct, Grubhub have realized and continues to realize profits and other benefits rightfully belonging to PFP for the Works. Accordingly, PFP is entitled to and seek an award of actual damages and profits pursuant to 17 U.S.C. § 504(b).

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub denies the allegations in paragraph 31.

32. In the alternative, because the Works were registered with the Copyright Office prior to the infringing uses by Grubhub, PFP is entitled to and seeks distinct statutory damages for Grubhub's infringements of the Works, including attorneys' fees and costs, pursuant to 17 U.S.C. §§ 504(c)(1) and 505.

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub denies the allegations in paragraph 32.

33. Despite notice to Grubhub that its reproduction and distribution of the Works was unauthorized, Grubhub continue to violate copyrights by continuing to display or store the Works through its servers and websites.

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub denies the allegations in paragraph 33.

34. As Grubhub's continuing infringements are with notice of their infringing activity, the infringements are performed with either reckless disregard for PFP's rights, willful blindness to its infringements of PFP's rights, or actual knowledge that its actions were and are infringing. The infringements are willful, and PFP is therefore entitled to the recovery of enhanced statutory damages pursuant to 17 U.S.C. 504(c)(2) where applicable.

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub denies the allegations in paragraph 34.

35. PFP is also entitled to and seek recovery of its costs of litigation and attorneys' fees pursuant to 17 U.S.C. § 505.

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub denies the allegations in paragraph 35.

COUNT II
[ALLEGED] SECONDARY COPYRIGHT INFRINGEMENT
17 U.S.C. §§ 501 et seq.

36. PFP re-alleges and incorporates by reference paragraphs 1 through 35 above.

ANSWER: Grubhub incorporates by reference its responses to paragraphs 1–35 of this Answer as if fully set forth herein.

37. By displaying the Works on Grubhub's websites without authorization, Grubhub's non-party restaurant and retailer users ("Users") directly infringed on PFP's exclusive rights granted in 17 U.S.C. § 106, specifically the exclusive rights to: (1) reproduce the copyrighted works in copies; (2) distribute copies of the copyrighted works to the public by sale or other transfer of ownership, or by rental, lease, or lending; and (3) display the copyrighted work publicly.

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub denies the allegations in paragraph 37.

38. As PFP discovered the unauthorized reproduction and distribution of the Works within three years from the date of this filing, all claims of infringement are within the three-year statute of limitations period pursuant to 17 U.S.C. § 507(b).

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub denies the allegations in paragraph 38.

39. As a direct and proximate result of their wrongful conduct, Grubhub's Users have realized and continue to realize profits and other benefits rightfully belonging to PFP for the Works. Accordingly, PFP is entitled to and seeks an award of actual damages and profits pursuant to 17 U.S.C. § 504(b).

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub denies the allegations in paragraph 39.

40. In the alternative, because the Works were registered with the Copyright Office prior to the infringing uses by Grubhub, PFP is entitled to and seeks distinct statutory damages for

Grubhub's infringements of the Works, including attorneys' fees and costs, pursuant to 17 U.S.C. §§ 504(c)(1) and 505.

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub denies the allegations in paragraph 40.

41. Grubhub had knowledge of Grubhub's Users' direct infringements, and induced, caused, and materially contributed to that infringing conduct, and so is a contributory infringer to all claims of direct infringement related to Grubhub's Users.

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub denies the allegations in paragraph 41.

42. Alternatively, as Grubhub had the legal right and the ability to stop their Users' infringements and gained a direct financial benefit from the infringements of the Works, Grubhub are vicariously liable for those infringements.

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub denies the allegations in paragraph 42.

43. As a result of Grubhub's vicarious liability or contributory infringement as alleged above, Grubhub obtained direct and indirect profits they would otherwise not have realized but for their Users' infringement of the Works.

ANSWER: Grubhub notes that Plaintiff's allegations call for a legal conclusion and therefore do not require a response. To the extent a response is required, Grubhub denies the allegations in paragraph 43.

RESPONSE TO PRAYER FOR RELIEF

Grubhub denies that Plaintiff is entitled to any relief from Grubhub and denies all allegations contained in paragraph 1–9 of Plaintiff’s Prayer for Relief. Grubhub respectfully requests that the Court deny Plaintiff’s Prayer for Relief.

GRUBHUB’S AFFIRMATIVE DEFENSES

In addition to answering the Complaint, Grubhub asserts the following affirmative defenses. Grubhub reserves the right to amend this Answer to add additional affirmative defenses as further information is obtained.

First Affirmative Defense: No Infringement

1. Grubhub does not infringe and has not infringed any of Plaintiff’s proper, valid copyrights under any theory, whether directly, indirectly, willfully, or vicariously.

Second Affirmative Defense: No Copyrightability

2. Plaintiff’s asserted copyrighted works are not sufficiently original or creative to constitute a valid, enforceable copyrightable work.

Third Affirmative Defense: Failure to State a Claim for Relief

3. Plaintiff’s claims are barred, in whole or in part, due to Plaintiff’s failure to state a claim upon which relief may be granted under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Fourth Affirmative Defense: Statute of Limitations

4. The purported infringements alleged by Plaintiff are barred by the statutes of limitations set forth in Section 507 of the Copyright Act, 17 U.S.C. § 507.

Fifth Affirmative Defense: Misuse of Copyright

5. Plaintiff’s claims are barred by the doctrine of misuse of copyright.

Sixth Affirmative Defense: Fair Use

6. Plaintiff's claims are barred by the doctrine of fair use.

Seventh Affirmative Defense: Laches

7. Plaintiff's claims are barred by the doctrine of laches.

Eighth Affirmative Defense: Merger Doctrine

8. Plaintiff's claims are barred by the merger doctrine.

Ninth Affirmative Defense: Scenes à Faire Doctrine

9. Plaintiff's claims are barred by the scenes à faire doctrine.

Tenth Affirmative Defense: De Minimis Doctrine

10. Plaintiff's claims are barred by the *de minimis* doctrine.

Eleventh Affirmative Defense: Invalid or Unenforceable Copyright Registrations

11. Plaintiff's claims are barred from this Court because the asserted copyright registrations, to the extent they can be identified by Plaintiff's allegations, are invalid for failure to comply with the requirements of 17 U.S.C. § 411 and/or because they purport to cover material that is not copyrightable.

Twelfth Affirmative Defense: Unregistered Copyrights

12. Plaintiff has no right to assert infringement of any unregistered copyrights.

Thirteenth Affirmative Defense: Implied License

13. Plaintiff's claims are barred by the doctrine of implied license.

Fourteenth Affirmative Defense: Equitable Defenses

14. Plaintiff's claims are barred by virtue of the doctrines of estoppel, double recovery, satisfaction, waiver, acquiescence, and/or additional equitable doctrines.

Fifteenth Affirmative Defense: No Injunctive Relief

15. Plaintiff's is not entitled to injunctive relief because any injury to Plaintiff is neither immediate nor irreparable, and Plaintiff has adequate remedies at law. Plaintiff's business model is based on repetitive licensing of its alleged copyrighted works and thus it cannot prove irreparable harm.

Sixteenth Affirmative Defense: No Willful Conduct

16. Should Grubhub be found to have infringed any valid copyrighted work owned by Plaintiff, such conduct was not willful, including was not willful under 17 U.S.C. § 504(c)(2).

Seventeenth Affirmative Defense: Unconstitutionally Excessive Damages

17. Plaintiff's claims are barred because the statutory damages sought are unconstitutionally excessive and disproportionate to any actual damages that may have been sustained in violation of the Due Process Clause.

Eighteenth Affirmative Defense: No Damages

18. Because Grubhub has made no sales of the asserted copyrighted works and has received no revenue therefrom, Plaintiff has not sustained any injury or damage by reason of any act by Grubhub alleged in the Complaint.

Nineteenth Affirmative Defense: No Statutory Damages

19. Plaintiff cannot recover statutory damages for copyright infringement alongside actual damages and profits under 17 U.S.C. § 504(c)(1).

Twentieth Affirmative Defense: No Attorneys' Fees

20. Plaintiff cannot recover attorneys' fees on its copyright claims from Grubhub under 17 U.S.C. § 505.

Twenty-First Affirmative Defense: DMCA Safe Harbors

21. Plaintiff's claims are limited and/or barred by the safe harbor provisions of the Digital Millennium Copyright Act.

JURY DEMAND

Grubhub hereby demands trial by jury on all issues.

Dated: November 28, 2022

Respectfully submitted,

FISH & RICHARDSON P.C.

By: /s/ Neil J. McNabnay

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**COUNSEL FOR DEFENDANTS
GRUBHUB HOLDINGS INC. AND
GRUBHUB INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on November 28, 2022, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Neil J. McNabney

Neil J. McNabney